

UNITED STATES DISTRICT COURT OF THE
SOUTHERN DISTRICT OF NEW YORK

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CHRISTOPHER KANE,

Plaintiff,

Case No. 7:20-cv-07936 (CS)

-against-

Motion Seq. No. 001, 002 & 003

MOUNT PLEASANT CENTRAL SCHOOL DISTRICT,
PHILIP CICCONE, SUSAN GUINEY, FRANK
VITERITTI, BRUCE FERGUSON, NICOLE SCHIMPF,
and RICHARD HENNESSY,

Defendants.
-----X

**AFFIDAVIT OF
KEVIN T. MULHEARN,
ESQ., SWORN TO ON
APRIL 23, 2021**

Respectfully submitted,

KEVIN T. MULHEARN, P.C.

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*Attorneys for Plaintiff,
CHRISTOPHER KANE*

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STATE OF NEW YORK:

ss:

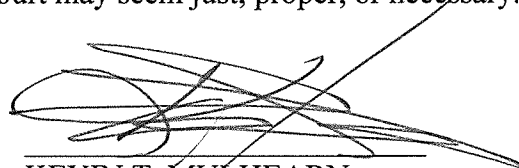
COUNTY OF ROCKLAND:

Kevin T. Mulhearn, Esq., being duly sworn, deposes and says that:

1. I am an attorney for Plaintiff, Christopher Kane, in this action, and hereby submit this affidavit in support of Plaintiff's Omnibus Memorandum of Law in Opposition to the Motions of Defendants, Mount Pleasant Central School District, Susan Guiney, Frank Viteritti, Bruce Ferguson, Nicole Schimpf, and Richard Hennessy (Motion No. 001), and Defendant Philip Ciccone (Motion No. 002), to Dismiss the Amended Complaint, and, if, necessary, in support of Plaintiff's cross-motion to amend the Amended Complaint (Motion No. 003).
2. I am familiar with the facts and circumstances as alleged herein based on my extensive review of the case file, numerous communications with my client, and my review of various public record filings and documents.
3. Attached hereto as Exhibit 1 is a true and accurate copy of Plaintiff's "Memorandum of Law in Single Opposition to Defendants' Motions to Dismiss the Amended Complaint," in *Boyle v. North Salem Central School District, et. al.*, Case No. 7:19-cv-08577(VB), in the United States District Court of the Southern District of New York, dated January 15, 2020 (Doc. No. 39 in that case).
4. Attached hereto as Exhibit 2 is a Proposed Second Amended Complaint, dated April 23, 2021, which Plaintiff hereby submits in support of his cross-motion, if necessary, for leave to file an amended pleading pursuant to Fed. R. Civ. P. 15(a).


5. This Proposed Second Amended Complaint adds two full paragraphs (§§ 82 & 83), in which Plaintiff more specifically pleads the element of “sexual gratification” (as defined in Section 130.00(3) of the N.Y. Penal Law) in connection with Defendant Ciccone’s alleged sexual abuse of Plaintiff in August, 2008.
6. This alleged sexual abuse by Defendant Ciccone triggers the N.Y. Child Victims Act (N.Y. CPLR § 214-g) which—as explained at length in Plaintiff’s accompanying memorandum of law—revives each of the previously time-barred causes of action asserted by Plaintiff against the Defendants in this action.
7. The Proposed Second Amended Complaint also deletes certain paragraphs from the Amended Complaint in connection with Plaintiff’s now withdrawn averments that he was entitled to delayed accrual and/or equitable estoppel of his Title IX retaliation claim against Defendant Mount Pleasant Central School District (Count III).
8. Plaintiff has also reworded Count VI (Intentional Infliction of Emotional Distress) to make clear that his Intentional Infliction of Emotional Distress cause of action is now pleaded *only* against Defendant Ciccone (and has been withdrawn against all of the other Defendants).

WHEREFORE, based on the aforesaid, and in conjunction with Plaintiff's accompanying memorandum of law in opposition, dated April 23, 2021, Deponent respectfully request that this Court issue an Order: (1) denying the motion of Defendants, Mount Pleasant Central School District, Susan Guiney, Frank Viteritti, Bruce Ferguson, Nicole Schimpf and Richard Hennessy (Motion No. 001), in its entirety; (2) denying the motion of Defendant Philip Ciccone to dismiss the Amended Complaint (Motion No. 002), in its entirety; (3) if necessary, granting Plaintiff's cross-motion for leave to amend the pleading (Motion No. 03); and (4) granting Plaintiff any other, different, or further relief as to which this Court may seem just, proper, or necessary.



KEVIN T. MULHEARN

Sworn to before me on
this 23rd day of April, 2021



NOTARY PUBLIC

DARREN EPSTEIN
NOTARY PUBLIC-STATE OF NEW YORK
No. 02EP5071398
Qualified in Nassau County
My Commission Expires 06-04-~~2022~~

2023

Respectfully submitted on April 23, 2021 by:

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